

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

PERKINS & MARIE CALLENDER'S
LLC,

Plaintiff,

V.

5171 CAMPBELLS LAND CO., INC.,
WILLIAM T. KANE, AND KRISTINE
KOCHIS,

Defendants.

Docket No. 2:19-cv-02414-JPM-dkv

**RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO CONTINUE
PRELIMINARY INJUNCTION HEARING**

Plaintiff Perkins & Marie Callender's LLC ("Plaintiff" or "PMC") cannot consent to and opposes Defendants' Motion to Continue Preliminary Injunction ("Motion to Continue"), (ECF No. 23), because Defendants are not complying with the Court's Temporary Restraining Order, (ECF No. 19). Thus, PMC will be unduly prejudiced by an extension of the Temporary Restraining Order and a continuance of the Preliminary Injunction Hearing.

In the Temporary Restraining Order, the Court ordered, among other things, that “Defendants are restrained from continuing to directly or indirectly identify the Restaurants as current or former Perkins restaurants, or as franchisees or licensees of, or as otherwise associated with PMC, as set forth in Section 16.C(1) of the Agreements[.]” (ECF No. 19 at PageID 245.) Defendants have failed to comply with this section (and others) of the Court’s Order, and, as of July 3, 2019, continue to operate no fewer than twenty-two (22) of the Restaurants as Perkins restaurants with their prior telephone numbers. *See* Declaration of Angela R. Morris, attached

hereto as **Exhibit 1**.

In addition, photos taken by Amber Richardson on July 3, 2019 of Store 3604 in Meadville, Pennsylvania and of Store 3464 in Greenville, Pennsylvania provide further evidence that Defendants are continuing to operate some of the Restaurants as Perkins restaurants in violation of the Court's Order. True and correct copies of two photos taken of the Meadville Restaurant, one of which was taken inside the Restaurant, are attached hereto as collective **Exhibit 2**. A true and correct copy of a photo taken from the parking lot of the Greenville Restaurant, which shows cars in the parking lot and the Perkins restaurant sign displayed on the roof of the building, is attached hereto as **Exhibit 3**.¹ And finally, at least one local news station in Youngstown, Ohio has published an article online about how many of the Restaurants remain open despite the Court's Order. *See* Gerry Ricciutti, *Many local Perkins restaurants remain open, despite court ruling*, WKBN First News 27, Nextstar Broadcasting, Inc., <https://www.wkbn.com/news/local-news/many-local-perkins-restaurants-remain-open-despite-court-ruling/> (last visited July 3, 2019). A true and correct copy of the WKBN First News article is attached hereto as **Exhibit 4**.

While Defendants' Motion to Continue discusses how Mr. Kane's health issues make it difficult for him to travel—which PMC recognizes and does not dispute—noticeably absent from the Motion to Continue is any statement that Defendants are currently in compliance with the Temporary Restraining Order. Based on the foregoing, PMC believes that Defendants are currently violating sections a., d., e., f., g., h., i., j., and l. of the Court's Temporary Restraining Order. (*See* ECF No. 19 at PageID 245-46.) Accordingly, PMC requests that the Court order

¹ PMC will be able to provide an additional declaration from Ms. Richardson authenticating the photos in **Exhibit 2** and **Exhibit 3** and the date on which they were taken if the Court finds that such authentication is necessary.

Defendants to show cause that they are in compliance with the Court's Order. For these reasons, PMC cannot consent to and opposes the Motion to Continue.

WHEREFORE, PMC requests that the Court deny the Motion to Continue Preliminary Injunction Hearing and, in addition, enter a show cause order requiring Defendants to show cause that they are in compliance with the Court's Temporary Restraining Order, (ECF No. 19).

This, the 3rd day of July, 2019.

Respectfully submitted,

**BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, PC**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically and that notice of the filing was served by the Court's CM/ECF System on the following counsel of record:

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